

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7674

Application of New Cingular Wireless PCS, LLC,)
d/b/a AT&T Mobility ("AT&T"), for authority,)
pursuant to 30 V.S.A. § 248a, for an amended)
Certificate of Public Good to upgrade a wireless)
communications facility in Brighton, Vermont)

Order entered: 5/25/2011

ORDER RE: PETITION TO AMEND ORDER

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") grants the petition filed on April 8, 2011, by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("AT&T" or the "Petitioner"), pursuant to 30 V.S.A. § 248a, and the Board's Order implementing standards and procedures under this section ("Procedures Order"),¹ and issues the Petitioner an Amended Certificate of Public Good ("CPG") authorizing the installation of a communications facility located in the Town of Brighton, Vermont (the "Project"), as part of Petitioner's Universal Mobile Telecommunications Service upgrade.

II. BACKGROUND

On November 10, 2010, the Board issued an Order in this docket approving a petition authorizing construction of the Project.

On April 8, 2011, the Petitioner filed a petition and prefiled testimony requesting that the Board issue an Amended Order and CPG to reflect proposed modifications to the originally proposed Project design.

1. *Order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*; Order issued August 14, 2009.

On May 3, 2011, the Department of Public Service ("Department") filed a letter with the Board recommending that the Board issue an Amended CPG for the Project without further evidence or hearings. In addition, the Department requests that, because the final tower and foundation structural analysis has not yet been completed, the order include a condition requiring the submission of the analysis prior to commencement of construction. The Department states that it has discussed the imposition of this condition with the Petitioner and the Petitioner has agreed to the condition. Therefore, we will include this condition in the CPG.

On May 5, 2011, the Town of Brighton filed a letter with the Board, via e-mail, stating that the Town planning Commission and Selectboard both endorsed the amended Project.

No other comments or requests for hearing regarding the Project have been filed with the Board.

The Board has determined that the petition and prefiled testimony have effectively addressed the applicable substantive criteria of 30 V.S.A. § 248a. Consequently, we find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings are required.

III. FINDINGS

1. The Project is part of AT&T's Universal Mobile Telecommunications Service ("UMTS") upgrade that involves the installation and modification of wireless telecommunications services in Vermont. The ultimate objective of the project is to upgrade AT&T's Vermont network to provide 3G wireless technologies for simultaneous circuit-switched voice and packet-switched data communications. Joint Panel pf. at 7.
2. The Project will allow interconnection with the other similar AT&T facilities comprising AT&T's Vermont network, some of which have already been upgraded and others that are slated for improvements. Joint Panel pf. at 7.
3. The Project involves the upgrade of a single facility located at 1371 Paradise Mountain Road in Brighton, Tax Map/Parcel ID No. ODERST.SR4L. Joint Panel pf. at 3.
4. The originally proposed project involved the installation and relocation of six four-foot panel antennas to a new 85-foot wooden pole at the site. The original proposal also involved the

replacement of two existing equipment shelters with a single 12-foot by 24-foot shelter erected on concrete piers. In addition, the original proposal involved the removal of existing antennas at the site and the installation of cables and associated operating equipment at the site. Joint Panel pf. at 3-4.

5. The amended Project includes the installation of a new 130-foot-tall steel monopole tower in place of the wooden pole, and the installation of six four-foot panel antennas at a height of 124 feet on the tower. The Project will also involve the installation of an approximately 4.5-foot whip antenna at the top of the tower to be used by the Brighton Fire Department, and a 2-foot translator antenna mounted at a height of 75 feet on the tower for use by WDEV, a/k/a Radio Vermont. The Project still includes the replacement of the equipment shelters and additional cabling and associated operating equipment as described in Finding No. 4 above. The Project will not exceed 135 feet in height or increase the height or width of any of the existing structures by more than twenty feet, and will involve less than 100 square feet of earth disturbance associated with Project construction activity at the existing site. Joint Panel pf. at 4-5; exh. JP-2.

6. The Project will not have an undue adverse impact on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 7 and 8, below.

7. The proposed Project will not have an undue adverse effect on aesthetics when viewed in the overall context of the existing facilities located at the site. Joint Panel pf. at 10-11.

8. There are no rare or irreplaceable natural areas or historic sites within the vicinity of the existing site where the Project will be located. Joint Panel pf. at 10-11.

IV. DISCUSSION & CONCLUSION

Pursuant to 30 V.S.A. § 248a(a):

Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that

the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

Pursuant to § 248a(j)(1), the Procedures Order defines a project of "limited size and scope" as a facility that:

(a) consists of an attachment to an existing structure that does not increase the height or width of the existing structure by more than twenty feet; or (b) does not exceed 135 feet in height and does not include road building or other earth disturbance exceeding 100 square feet, other than a temporary road or earth disturbance associated with construction or installation activities.

Further, pursuant to Section (L) of the Procedures Order, regarding projects of "limited size and scope:"

Unless the Board determines that an application raises a substantial issue, it shall issue a final determination on an application within 45 days of its filing

The communications facility upgrade comprising the proposed Project includes the installation of a new pole under 135 feet in height, does not increase the height or width of any existing structure by more than twenty feet, and there will be less than 100 square feet of earth disturbance associated with Project installation at the existing sites. Therefore, the Project qualifies as a facility of "limited size and scope" as defined in the Board's Procedures Order governing the installation of wireless telecommunications facilities. The Procedures Order provides that the Board, in its review of facilities of "limited size and scope," conditionally waives all criteria under 30 V.S.A. § 248a(c)(1), with the exception of 10 V.S.A. § 6086(a)(8) (aesthetics, historic sites, rare and irreplaceable natural areas).

Based upon all of the above evidence, the petition does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the installation and operation of a communications facility at the location specified in the above findings, by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, in accordance with the amended and proposed evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and an amended certificate of public good to that effect shall be issued in this matter.

Dated at Montpelier, Vermont, this 25th day May, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: May 25, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.